

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215678

DATE: July 30, 1984

MATTER OF: Sevcik-Thomas Builders and Engineers
Corporation

DIGEST:

1. Evidence of authority to sign bid bond on behalf of company may be furnished after bid opening, and failure to furnish it does not render bid nonresponsive.
2. Acceptance of a prospective contractor's offer must be clear and unconditional. Statements by agency personnel that bidder "has the job" do not give rise to a contract when solicitation specifically states that written notice of acceptance will be furnished to the successful bidder and no such notice is sent.
3. The government is not estopped from denying the existence of a contract where there is no action or statement by the authorized contracting officer that might reasonably be construed as an inducement for the bidder to take action before written confirmation of award.

Sevcik-Thomas Builders and Engineers Corporation protests the Forest Service's award of a contract for construction of the Petersburg Work Center in the Klamath National Forest, California, to Reel Construction Company. We summarily deny the protest.

Reel submitted the lowest bid, \$418,539, for the project. The contracting officer, however, believed the company's bid bond was defective because it had been signed by B.H. Reed, General Manager, and there was nothing on record which showed that this individual had authority to act on behalf of the company.

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By letter dated May 2, 1984, Sevcik-Thomas, the second low bidder at \$421,967, was asked to verify its bid. It also was asked a number of questions apparently relating to its responsibility. The protester states that on the strength of this letter and conversations with Forest Service personnel, who allegedly told Sevcik-Thomas that it "had the job," it withdrew its bid on another contract so that it would not exceed its bonding capacity. It also contacted subcontractors.

Meanwhile, a successor to the original contracting officer reviewed Reel's bid, and determined that the bid bond was not defective and that the bid was therefore responsive. On May 2, 1984, the Forest Service advised Sevcik-Thomas that it had awarded a contract to Reel. The firm's subsequent protest to the agency was denied.

The protester first contends that it should have received the award because Reel's bid bond was defective. Alternatively, it argues that even if Reel's bid bond was not defective, the contract should be awarded to Sevcik-Thomas because agency personnel made representations to it on which the company relied to its detriment.

We agree with the second contracting officer that Reel's bid bond was acceptable. As a general rule, a bid bond in the proper amount is regarded as defective, rendering the bid nonresponsive, only if it is not clear that it will bind the surety. Here, the name of the bidder and the principal on the bond are the same, so that the question of whether the surety is bound does not arise. Compare Anderson Construction Co.; Rapp Constructors, Inc., B-213955, B-213955.2, March 9, 1984, 84-1 CPD ¶ 279 (discrepancy between bidder and principal on bid bond requires rejection of bid).

Furthermore, Reel was not legally prohibited from furnishing proof that its general manager had authority to sign the bid and bid bond after opening. See Marine Power and Equipment Co., Inc., 62 Comp. Gen. 75 (1982), 82-2 CPD ¶ 514; Fortec Constructors; Construcciones Werl, Inc., B-180479, May 8, 1974, 74-1 CPD ¶ 235. Therefore, Reel's bid was responsive and the firm was eligible for award, so long as it was able to verify the general manager's authority.

Sevcik-Thomas implies that statements by Forest Service personnel constituted an acceptance of its bid. We find that no contract resulted from the oral communications between the protester and the Forest Service.

Acceptance of a prospective contractor's offer by the government must be clear and unconditional, and a contract does not come into existence when the purported acceptance is conditioned on future actions by the offeror and the procuring agency. Northpoint Investors, B-209816, May 17, 1983, 83-1 CPD ¶ 523. In this case, as indicated by documents submitted by the protester, Standard Form 21, part of the solicitation, specifically states that written notice of acceptance will be furnished to the successful bidder. No such notice was sent to Sevcik-Thomas.

Nor do we find that the protester's reliance on these statements estops the government from denying that any contract exists. The government is only estopped when, among other things, it intends its conduct to be acted upon or acts so that the party asserting the estoppel has a right to believe that the conduct is so intended. See Trataros Painting and Construction Corp., 56 Comp. Gen. 271 (1977), 77-1 CPD ¶ 37. Here, as the Forest Service advised Sevcik-Thomas following its protest to the agency, the individuals who allegedly told the firm that it had the job had no authority to bind the government contractually, and the government is not bound by the unauthorized acts of its agents. See DBA Systems, Inc.--Reconsideration, B-212101.2, Aug. 23, 1983, 83-2 CPD ¶ 244. In our opinion, a reasonable bidder would not have assumed that it was intended to act in the absence of written confirmation of award from the contracting officer. See Motorola, Inc., B-191339, Oct. 19, 1978, 78-2 CPD ¶ 287. Finally, there is no evidence of any statement by government personnel that might reasonably be construed as an inducement for Sevcik-Thomas to contact subcontractors or cancel other construction plans before a contract was finalized. Sevcik-Thomas took those steps on its own initiative.

The protest is denied.


for Comptroller General
of the United States